

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Unlicensed
Activity of Goldman and Company.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for a prehearing conference before Administrative Law Judge George A. Beck commencing at 9:30 a.m. on November 23, 1999, at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401-2138.

Sarah Walter, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101, appeared on behalf of the Minnesota Department of Commerce ("Department"). Respondent did not appear at the prehearing conference. The record closed on November 23, 1999, upon Respondent's default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Steven M. Minn, Commissioner, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this case is whether or not civil penalties should be imposed against Respondent under Minn. Stat. § § 45.027, subd. 6 and 7, and 332.33 (1998).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 18, 1999, an Amended Notice of and Order for Hearing and Notice of Prehearing Conference in the above-referenced matter were served on

Respondent via certified U.S. Mail at Harman Company Tower One, Suite AL13, Secaucus, New Jersey 07094. Service was also made upon Respondent through the Commissioner of Commerce under Minn. Stat. § 45.028.

2. The Amended Notice of and Order for Hearing and Notice of Prehearing Conference served on Respondent contained the following statement:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and a civil penalty may be imposed against Respondent without further proceedings.

3. Respondent did not appear at the November 23, 1999 prehearing conference, made no prehearing request for a continuance, nor did it file a Notice of Appearance.

4. The allegations of the Amended Notice of and Order for Hearing and Notice of Prehearing conference are deemed proved and incorporated into these Findings by reference.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Commissioner of Commerce and the Administrative Law Judge have subject matter jurisdiction herein pursuant to Minn. Stat. § § 45.027, 332.33, and 14.50.

2. Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all relevant substantive and procedural requirements of statute and rule.

4. Under Minn. R. 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. R. 1400.6000, the allegations and the issues set out in the Notice of and Order for Hearing and Notice of Prehearing Conference may be taken as true or deemed proved when a party defaults.

6. Based upon the facts set out in the Amended Notice of and Order for Hearing and Notice of Prehearing conference, Respondent has violated Minn. Stat. § § 332.31, 332.33 and the Cease and Desist Order issued June 5, 1998.

7. An order is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner consider civil penalties.

Dated this 29th day of November 1999.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Default.

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.